



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

Docket No. NHTSA-2012-0131; Notice 2

RIN 2127-AL16

Civil Penalties

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document increases the maximum civil penalty amounts for violations of motor vehicle safety requirements for the National Traffic and Motor Vehicle Safety Act, as amended, and violations of bumper standards and consumer information provisions. Specifically, this increases the maximum civil penalty amounts for single violations of motor vehicle safety requirements, a series of related violations of school bus and equipment safety requirements, a series of related violations of bumper standards, and a series of related violations of consumer information regarding crashworthiness and damage susceptibility requirements. This action is taken pursuant to the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, which requires us to review and, as warranted, adjust penalties based on inflation at least every four years.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Any petitions for reconsideration should refer to the docket number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, West Building, Fourth Floor, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Matthew Weisman, Office of Chief Counsel, NHTSA, telephone (202) 366-5834, facsimile (202) 366-3820, 1200 New Jersey Ave, SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

In order to preserve the remedial impact of civil penalties and to foster compliance with the law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Notes, Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) (referred to collectively as the "Adjustment Act" or, in context, the "Act"), requires us and other Federal agencies to adjust civil penalties for inflation. Under the Adjustment Act, following an initial adjustment that was capped by the Act, these agencies must make further adjustments, as warranted, to the amounts of penalties in statutes they administer at least once every four years.

NHTSA's initial adjustment of civil penalties under the Adjustment Act was published on February 4, 1997. 62 FR 5167. At that time, we codified the penalties under statutes administered by NHTSA, as adjusted, in 49 CFR part 578, Civil Penalties. Thereafter, we adjusted certain penalties based on the Adjustment Act and codified others based

on other laws including the Transportation Recall Enhancement, Accountability, and Documentation Act.

On May 16, 2006, NHTSA last adjusted the maximum civil penalty for a single violation of the Motor Vehicle Safety Act, sections 30112, 30115, 30117 through 30122, 30123, 30125(c), 30127, or 30141 through 30147 of Title 49 of the United States Code or a regulation thereunder, as specified in 49 CFR 578.6(a)(1) from \$5,000 to \$6,000. 71 FR 28279. At the same time, the agency adjusted the maximum civil penalty for a single violation of the Motor Vehicle Safety Act, section 30166 of Title 49 of the United States Code or a regulation thereunder, to \$6,000.

On February 10, 2010, NHTSA last adjusted the maximum civil penalty for a related series of violations of the Motor Vehicle Safety Act as amended involving school buses and school bus equipment, section 30112(a)(1) as it involves school buses and school bus equipment and section 30112(a)(2) of Title 49 of the United States Code, as specified in 49 CFR 578.6(a)(2) from \$15,000,000 to \$16,650,000. 75 FR 5246.

Also on February 10, 2010, NHTSA last adjusted the maximum civil penalty for a related series of violations of bumper standards, section 32506 of Title 49 of the United States Code, as specified in 49 CFR 578.6(c)(2) from \$1,025,000 to \$1,175,000. 75 FR 5246. In addition, on February 10, 2010, NHTSA last adjusted the maximum civil penalty for a related series of violations of consumer information requirements regarding crashworthiness and damage susceptibility, section 32308 of Title 49 of the United States Code, as specified in 49 CFR 578.6(d)(1) from \$500,000 to \$575,000. 75 FR 5246.

We have reviewed the civil penalty amounts in 49 CFR part 578 and on September 7, 2012, published a NPRM initiating this rulemaking to adjust certain penalties under the Adjustment Act. 77 FR 55175.

II. Method of Calculation -- Adjustments

Under the Adjustment Act, we determine the inflation adjustment for each applicable civil penalty by increasing the maximum civil penalty amount per violation by a cost-of-living adjustment, and then applying a rounding factor. Section 5(b) of the Adjustment Act defines the "cost-of-living" adjustment as: The percentage (if any) for each civil monetary penalty by which—

- (1) The Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds
- (2) The Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

Since the adjustment is intended to be effective before December 31, 2012, the "Consumer Price Index [CPI] for the month of June of the calendar year preceding the adjustment" would be the CPI for June 2011. This figure, based on the Adjustment Act's requirement of using the CPI "for all-urban consumers published by the Department of Labor" is 676.162. The penalty amounts that NHTSA is adjusting based on the Adjustment Act's requirements were last set in 2006 for a single violation of the Motor Vehicle Safety Act, and in 2010 for a series of related violations of school bus safety requirements, a series of related violations of bumper standards, and a series of related violations of consumer information

requirements regarding crashworthiness and damage susceptibility. The CPI figure for June of 2006 is 607.8 and June of 2010 is 652.926

Individuals interested in deriving the CPI figures used by the agency may visit the Department of Labor's Consumer Price Index Home Page at <http://www.bls.gov/cpi/home.htm>. Scroll down to "CPI Databases", "All Urban Consumers (Current Series)", and click on "Top Picks". Next, select the "U.S. ALL ITEMS 1967=100--CUUR0000AA0" box, and click on the "Retrieve Data" button.

Accordingly, the factors that we are using in calculating the increases are 1.11 (676.162/607.8) for a single Motor Vehicle Safety Act violation and 1.04 (676.162/652.926) for a related series of Motor Vehicle Safety Act violations pertaining to school buses or school bus equipment, as well as for a series of related violations of bumper standards, and a series of related violations of consumer information requirements. Using these inflation factors, calculated increases under these adjustments are then subject to a specific rounding formula set forth in Section 5(a) of the Adjustment Act. 28 U.S.C. 2461, Notes. Under that formula:

Any increase shall be rounded to the nearest:

- (1) Multiple of \$10 in the case of penalties less than or equal to \$100;
- (2) Multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;
- (3) Multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;
- (4) Multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000;

(5) Multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and

(6) Multiple of \$25,000 in the case of penalties greater than \$200,000.

III. Changes to Maximum Penalties Under the Motor Vehicle Safety Act, 49 U.S.C.

Chapter 301

Changes to 49 CFR 578.6(a)(1), (a)(3)

The maximum civil penalty for a violation of any of sections 30112, 30115, 30117 through 30122, 30123(a), 30125(c), 30127, or 30141 through 30147 of Title 49 of the United States Code or a regulation prescribed under any of those sections is \$6,000, as specified in 49 CFR 578.6(a)(1). The underlying statutory civil penalty provision is 49 U.S.C. 30165(a)(1). Applying the appropriate inflation factor (1.11) to the Adjustment Act calculation raises the \$6,000 figure to \$6,679, an increase of \$679. Under the rounding formula, any increase in a penalty's amount shall be rounded to the nearest multiple of \$1,000. In this case, the increase would be \$1,000. Accordingly, NHTSA is amending Section 578.6(a)(1) to increase the maximum civil penalty from \$6,000 to \$7,000 for each violation.

The maximum civil penalty for a violation of section 30166 of Title 49 of the United States Code or a regulation prescribed under that section is \$6,000, as specified in 49 CFR 578.6(a)(3). The underlying statutory civil penalty provision is 49 U.S.C. 30165(a)(3). Applying the appropriate inflation factor (1.11) to the Adjustment Act calculation raises the \$6,000 figure to \$6,679, an increase of \$679. Under the rounding formula, any increase in a penalty's amount shall be rounded to the nearest multiple of \$1,000. In this case, the increase would be \$1,000. Accordingly, NHTSA is amending Section 578.6(a)(3) to increase the maximum civil penalty from \$6,000 to \$7,000 per violation per day.

Change to 49 CFR 578.6(a)(2)

The maximum civil penalty for a series of related violations of section 30112(a)(1) of Title 49 of the United States Code involving school buses or school bus equipment, or of the prohibition on school system purchases and leases of 15 passenger vans as specified in 30112(a)(2) of Title 49 of the United States Code is \$16,650,000, as codified in 49 CFR 578.6(a)(2). The underlying statutory civil penalty provision is 49 U.S.C. 30165(a)(2). Applying the appropriate inflation factor (1.04) to the Adjustment Act calculation raises the \$16,650,000 figure to \$17,242,531, an increase of \$592,531. Applying the rounding rules, which instruct that increases be rounded to the closest \$25,000, produces an increase of \$600,000. Accordingly, NHTSA is increasing the maximum penalty under Section 578.6(a)(2) to \$17,250,000.

Change to Maximum Penalty Under 49 U.S.C. 32506(a) (49 CFR 578.6(c))

The maximum civil penalty for a series of related violations of bumper prohibitions, section 32506(a) of Title 49 of the United States Code, is \$1,175,000 as specified in 49 CFR 578.6(c). The underlying statutory civil penalty provision is 49 U.S.C. 32507. Applying the appropriate inflation factor (1.04) to the Adjustment Act calculation raises the \$1,175,000 figure to \$1,216,815, an increase of \$41,815. Applying the rounding rules, which instructs that increases be rounded to the closest \$25,000, produces an increase of \$50,000. Accordingly, NHTSA is increasing the maximum penalty under Section 578.6(c)(2) to \$1,225,000.

Change to Maximum Penalty Under the Consumer Information Provisions (49 CFR 578.6(d)(1))

The maximum civil penalty for a series of related violations of consumer information provisions regarding crashworthiness and damage susceptibility, section 32308(a) of Title 49 of the United States Code, is \$575,000 as specified in 49 CFR 578.6(d)(1). Applying the

appropriate inflation factor (1.04) to the Adjustment Act calculation raises the \$575,000 figure to \$595,462, an increase of \$20,462. Applying the rounding rules, which instruct that increases be rounded to the closest \$25,000, produces an increase of \$25,000. Accordingly, NHTSA is increasing the maximum penalty under Section 578.6(d)(1) to \$600,000.

Codification of Penalty in the Medium and Heavy Duty Vehicle Fuel Efficiency Program

The Agency's regulations provide that the maximum penalty is \$37,500 per vehicle or engine. 49 CFR 535.9(b)(3). Consistent with the approach of codifying the penalties under statutes administered by NHTSA in Part 578, NHTSA is codifying this amount in a new subsection

(i) of 49 CFR 578.6.

IV. Public Comments on NPRM

NHTSA received one public comment in response to the Notice of Proposed Rulemaking for this rulemaking. The comment was from a private individual expressing support for the proposed rulemaking, noting that civil penalties can lose their effectiveness over time through inflation, and that review and amendment of penalties is necessary to maintain their effectiveness.

V. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866, "Regulatory Planning and Review." This action is limited to the adoption of adjustments of civil penalties under statutes that the agency enforces, and has been determined to be not "significant" under the Department of

Transportation's regulatory policies and procedures and the policies of the Office of Management and Budget.

Regulatory Flexibility Act

We have also considered the impacts of this notice under the Regulatory Flexibility Act. I certify that a this rule will not have a significant economic impact on a substantial number of small entities. The following provides the factual basis for this certification under 5 U.S.C. 605(b). The amendments almost entirely potentially affect manufacturers of motor vehicles and motor vehicle equipment.

The Small Business Administration's regulations define a small business in part as a business entity ``which operates primarily within the United States." 13 CFR 121.105(a). SBA's size standards were previously organized according to Standard Industrial Classification (``SIC") Codes. SIC Code 336211 ``Motor Vehicle Body Manufacturing" applied a small business size standard of 1,000 employees or fewer. SBA now uses size standards based on the North American Industry Classification System (``NAICS"), Subsector 336--Transportation Equipment Manufacturing, which provides a small business size standard of 1,000 employees or fewer for automobile manufacturing businesses. Other motor vehicle-related industries have lower size requirements that range between 500 and 750 employees.

For example, according to the SBA coding system, businesses that manufacture truck trailers, travel trailers/campers, carburetors, pistons, piston rings, valves, vehicular lighting equipment, motor vehicle seating/interior trim, and motor vehicle stamping qualify as small businesses if they employ 500 or fewer employees. Similarly, businesses that manufacture gasoline engines, engine parts, electrical and electronic equipment (non-vehicle lighting), motor

vehicle steering/suspension components (excluding springs), motor vehicle brake systems, transmissions/power train parts, motor vehicle air-conditioning, and all other motor vehicle parts qualify as small businesses if they employ 750 or fewer employees. See <http://www.sba.gov/size/sizetable.pdf> for further details.

Many small businesses are subject to the penalty provisions of 49 U.S.C. Chapter 301 (Motor Vehicle Safety Act) and therefore may be affected by the adjustments made in this rulemaking. For example, based on comprehensive reporting pursuant to the early warning reporting (EWR) rule under the Motor Vehicle Safety Act, 49 CFR part 579, of the more than 60 light vehicle manufacturers reporting, over half are small businesses. Also, there are other, relatively low production vehicle manufacturers that are not subject to comprehensive EWR reporting. Furthermore, there are about 70 registered importers. Equipment manufacturers (including importers), entities selling motor vehicles and motor vehicle equipment, and motor vehicle repair businesses are also subject to penalties under 49 U.S.C. 30165.

As noted throughout this preamble, this rule will only increase the maximum penalty amounts that the agency could obtain for a single violation and a related series of violations of various provisions of the Motor Vehicle Safety Act, as well as for a series of related violations of bumper standards, and a series of related violations of consumer information requirements for violations. Under the Motor Vehicle Safety Act, the penalty provision requires the agency to take into account the size of a business when determining the appropriate penalty in an individual case. See 49 U.S.C. 30165(b). The agency would also consider the size of a business under its civil penalty policy when determining the appropriate civil penalty amount. See 62 FR 37115 (July 10, 1997) (NHTSA's civil penalty policy under the Small Business Regulatory

Enforcement Fairness Act ("SBREFA")). The penalty adjustments would not affect our civil penalty policy under SBREFA.

Since this regulation does not establish penalty amounts, this rule will not have a significant economic impact on small businesses. Small organizations and governmental jurisdictions will not be significantly affected as the price of motor vehicles and equipment ought not change as the result of this rule. As explained above, this action is limited to the adoption of a statutory directive, and has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

The reason is that this rule will generally apply to motor vehicle and motor vehicle equipment manufacturers (including importers), entities that sell motor vehicles and equipment and motor vehicle repair businesses. It will have very limited applicability to States or local governments, as where they purchase or lease 15 passenger vans used for certain school purposes or activities, which vans do not comply with federal motor vehicle safety standards for school buses and multifunction school activity buses. Thus, the requirements of Section 6 of the Executive Order do not apply.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Public Law 104-4, requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. Because this rule will not have a \$100 million effect, no Unfunded Mandates assessment will be prepared.

Executive Order 12778 (Civil Justice Reform)

This rule does not have a retroactive or preemptive effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, we state that there are no requirements for information collection associated with this rulemaking action.

Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78), or you may visit <http://dms.dot.gov>.

List of Subjects in 49 CFR Part 578

Imports, Motor vehicle safety, Motor vehicles, Rubber and Rubber Products, Tires, Penalties.

In consideration of the foregoing, 49 CFR part 578 is amended as set forth below.

PART 578—CIVIL AND CRIMINAL PENALTIES

1. The authority citation for 49 CFR Part 578 is revised to read as follows:

Authority: Pub. L. 101-410, Pub. L. 104-134, Pub. L. 109-59, 49 U.S.C. 30165, 30170, 30505, 32308, 32309, 32507, 32709, 32710, 32902, 32912, and 33115; delegation of authority at 49 CFR 1.81, 1.95.

2. Section 578.6 is amended by revising paragraphs (a), (c)(2), and (d)(1) and adding paragraph (i) to read as follows:

§ 578.6 Civil penalties for violations of specified provisions of Title 49 of the United States Code.

(a) Motor vehicle safety--(1) In general. A person who violates any of sections 30112, 30115, 30117 through 30122, 30123(a), 30125(c), 30127, or 30141 through 30147 of Title 49 of

the United States Code or a regulation prescribed under any of those sections is liable to the United States Government for a civil penalty of not more than \$7,000 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by any of those sections. The maximum civil penalty under this paragraph for a related series of violations is \$17,350,000.

(2) School buses. (A) Notwithstanding paragraph (a)(1) of this section, a person who:

(i) Violates section 30112(a)(1) of Title 49 United States Code by the manufacture, sale, offer for sale, introduction or delivery for introduction into interstate commerce, or importation of a school bus or school bus equipment (as those terms are defined in 49 U.S.C. 30125(a)); or

(ii) Violates section 30112(a)(2) of Title 49 United States Code, shall be subject to a civil penalty of not more than \$11,000 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by this section. The maximum penalty under this paragraph for a related series of violations is \$17,250,000.

(3) Section 30166. A person who violates section 30166 of Title 49 of the United States Code or a regulation prescribed under that section is liable to the United States Government for a civil penalty for failing or refusing to allow or perform an act required under that section or regulation. The maximum penalty under this paragraph is \$7,000 per violation per day. The maximum penalty under this paragraph for a related series of daily violations is \$17,350,000.

* * * * *

(c) * * *

(2) The maximum civil penalty under this paragraph (c) for a related series of violations is \$1,225,000.

(d) Consumer information--(1) Crash-worthiness and damage susceptibility. A person who violates 49 U.S.C. 32308(a), regarding crashworthiness and damage susceptibility, is liable to the United States Government for a civil penalty of not more than \$1,100 for each violation. Each failure to provide information or comply with a regulation in violation of 49 U.S.C. 32308(a) is a separate violation. The maximum penalty under this paragraph for a related series of violations is \$600,000.

* * * * *

(i) Medium- and heavy-duty vehicle fuel efficiency. The maximum civil penalty for a violation of the fuel consumption standards of 49 CFR part 535 is not more than \$37,500 per vehicle or engine. The maximum civil penalty for a related series of violations shall be determined by multiplying \$37,500.00 times the vehicle or engine production volume for the model year in question within the regulatory averaging set.

Issued on: November 19, 2012

David L. Strickland
Administrator

BILLING CODE 4910-59-P

[FR Doc. 2012-28694 Filed 11/26/2012 at 8:45 am; Publication Date: 11/27/2012]